IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902.

Nos. 140 and 265.

THE BOARD OF DIRECTORS OF THE CHICAGO THEOLOGICAL SEMINARY, *Plaintiff in Error,* **v. THE PEOPLE OF THE STATE OF ILLINOIS ex rel. SAMUEL B. RAYMOND, County Treasurer and ex-officio County Collector of Cook County, Illinois.**	Error to the Supreme Court of the State of Illinois.

STATEMENT OF THE CASES.

These are writs of error to the Supreme Court of Illinois to review the action of that court affirming County Court judgments for delinquent taxes levied against the real estate of plaintiff in error, which real estate is not a part of or connected with the school or seminary which plaintiff in error has located and is maintaining in the City of Chicago. Plaintiff in error claims that all of its real estate is exempt under its charter which was granted prior to the constitution of 1870. Section 2 of the charter requires that the seminary be located in or near the City of Chicago; section 4 empowers the directors to appoint "such officers, professors and teachers as the

government and instruction of the seminary may require." Section 5 is as follows:

> "That the property, of whatever kind or description, belonging or appertaining to said seminary, shall be forever free and exempt from all taxation for all purposes whatsoever."

The Supreme Court of Illinois, in a prior case reported as *People* v. *Chicago Theological Seminary*, 174 Ill., 177, construed this charter with reference to the exemption granted by it. The decision in that case was held to be final and conclusive as to all questions there decided and constitutes a bar to the same questions raised in the present proceedings.

The provisions of the revenue act of the State of Illinois in force at the time of the granting of the charter of plaintiff in error which are material to the issues at bar are as follows:

> "Sec. 1. All property, real and personal, within this state, shall be liable to taxation, subject to the exceptions hereinafter stated.
>
> Sec. 4. The following property shall be exempt from taxation: * * * 3d. All lands belonging to the school fund of any township in this state, and every school house, court house, jail, and the land whereon such buildings are situated, all property which is, or may be, exempt from taxation by special law, and all county lands and buildings set apart for county purposes, not to exceed five acres. * * * 5th. Every building erected for the use of any literary, religious, benevolent, charitable or scientific institution, and the tract of land on which the same is situated, not exceeding ten acres."
>
> Scates & Blackwell's Revised Statutes 1866, Vol. 2, pages 987-988.

The corresponding provisions of the revenue act of 1872 are as follows (Vol. 3, Starr & Curtiss's Ann. Stat. 1896, page 3398):

> "Sec. 1. That the property named in this section shall be assessed and taxed, except so much thereof as may be in this act exempted.
>
> First. All real and personal property in this state."
>
> "Sec. 2. All property described in this section, to the extent herein named, shall be exempt from taxation, that is to say,
>
> First. * * * All property of institutions of learning, including the real estate on which the institutions are located, not leased by such institutions or otherwise used with a view to profit."

Plaintiff in error claims that the Supreme Court of Illinois erred in holding that its charter does not exempt the real estate assessed; that, under a proper construction of its charter, all real estate owned by it is exempt, and that, therefore, the revenue act of 1872, under which the assessment was made and the taxes levied, impairs the obligations of its contract.

Per contra it is urged that this court has no jurisdiction, and that upon a proper construction of the charter only such real estate is exempt as is a part of or connected with the seminary or school.

The grounds upon which these contentions are urged will appear fully in the brief and argument.

BRIEF OF ARGUMENT.

I.

THIS COURT HAS NO JURISDICTION TO REVIEW THE JUDGMENT OF THE STATE COURT.

1. *One of the grounds for the judgment of the state court is res judicata, and this is not a Federal question.*

It is well settled law that where there are two grounds for the judgment of a State Court, only one of which involves a Federal question and the other is broad enough to maintain a judgment sought to be reviewed, this Court will not look into the Federal question but will dismiss the writ of error.

Bacon v. *Texas*, 163 U. S., 207;
Eustis v. *Bolles*, 150 U. S., 361;
Beaupre v. *Noyes*, 138 U. S., 397;
Rutland v. *Central Vermont R. R.*, 159 U. S., 630;
Gillis v. *Stinchfield*, 159 U. S., 658;
Seneca Nation v. *Christy*, 162 U. S., 283.

2. *The state court did not give effect to and enforce a new rule of exemption established by the revenue act of 1872. It was not necessary to determine whether the act of 1872 changed the rule of exemption; the State Court did not pass on any such question.*

Knox v. *Exchange Bank*, 12 Wallace, 383;
Railroad Co. v. *Rock*, 4 Wallace, 177-181;

St. Paul, etc., Ry. Co. v. *Todd Co.*, 142 U. S., 282;

Railroad Co. v. *McClure*, 10 Wallace, 511-515.

II.

THE CHARTER OF PLAINTIFF IN ERROR EXEMPTS ONLY SUCH PROPERTY OWNED BY IT AS IS A PART OF OR CONNECTED WITH ITS SEMINARY LOCATED IN THE CITY OF CHICAGO.

1. *The exemption clause of the charter has been construed by the Supreme Court of Illinois in Theological Seminary* v. *People, 174 Ill., 177, and this is res judicata.*

2. *It is the law of the State of Illinois, as it is the law adhered to by the Supreme Court of the United States, that all laws exempting property from taxation must be strictly construed. It is not to be presumed that the legislature intended to exempt property from taxation; that intention must appear affirmatively, and will be strictly construed.*

As to the question of strict construction of contracts exempting property from taxation when there is involved a question of the alleged impairment of that contract contrary to the provisions of the Federal Constitution, reference is had to the following adjudicated cases:

Wilmington & Weldon R. R. v. *Alsbrook*, 146 U. S., 279-293;

Delaware Railroad Tax, 18 Wall., 206;

Farrington v. *Tennessee*, 95 U. S., 679;

Ohio Life Ins. Co. v. *Debolt*, 16 Howard, 416;

Railroad v. *Dennis*, 116 U. S., 668;
Providence Bank v. *Beattie*, 4 Peters, 514;
Charles River Bridge v. *Warren Bridge*, 11 Peters, 544;
Chenango Bridge Co. v. *Binghampton Bridge Co.*, 2 Wall., 51;
University v. *The People*, 99 U. S., 309.

The Supreme Court of Illinois has consistently adhered to the same rule.

First M. E. Church of Chicago v. *City*, 26 Ill., 482;
Montgomery v. *Wyman*, 130 Ill., 17;
Theological Seminary v. *The People*, 101 Ill., 518;
In Re Swigert, 123 Ill., 267.

The title of an act furnishes little aid in the construction of the provisions of the act itself, and can only be referred to when there is a doubt as to the meaning of the act itself, and when necessary to refer to the title that fact of itself is sufficient to defeat the claim of exemption.

Hadden v. *The Collector*, 5 Wall., 107-110;
Yazoo R. R. Co. v. *Thomas*, 132 U. S., 174-188.

A reasonable and consistent construction of the exemption clause of the charter of plaintiff in error calls for the following definitions of the words used, viz., the verb "belong" is to be defined as "to be a part of or connected with," as is given in Webster's International Dic-

tionary. And the word "seminary" is to be defined, according to the same authority, as "a place of education, as a school of a high grade, an academy, college or university."

Construing the exemption clause of the charter in this manner it will exempt all property owned by the corporation which is a part of or connected with the school, which the corporation has located and is maintaining in the City of Chicago.

ARGUMENT.

I.

THIS COURT HAS NO JURISDICTION TO REVIEW THE JUDGMENT OF THE STATE COURT.

1. *One of the grounds for the judgment of the State Court is res judicata, and this is not a Federal question.*

Under the revenue law of the State of Illinois, the County Court is required to hear and determine applications for judgment against delinquent lands and lots in a summary manner, without pleadings, and to pronounce judgment as the right of the case may be. (Sec. 191, Chap. 120, Revised Statutes. See appendix, page 34.) In 1897 application was made for judgment for taxes delinquent for the year 1896, and plaintiff in error then appeared in the County Court of Cook County and made objection that under its charter all of its property was exempt. This litigation was carried to the Supreme Court of Illinois and that court rendered the opinion reported in 174 Ill., 177. (*People* v. *Theological Seminary*, pp. 34-40, appendix, which by stipulation is a part of the evidence in No. 140.) Neither in the County Court nor in the Supreme Court was it ever intimated that any Federal question was involved. Such a question was not raised by the parties, and, therefore, under no circumstances could that case have ever been brought to this Court for review.

We submit that the judgment in that case is final and conclusive between the parties as to the questions actual-

ly discussed and adjudicated in and by this decision of the Supreme Court. This was the view taken by the Illinois Supreme Court in the cases at bar. In the opinion in No. 140 the Court entered into a very elaborate discussion of the scope and effect of the judgment and decided that under the provisions of the practice act of the State it is final and conclusive on the parties as to the construction of the exemption clause of the charter of plaintiff in error. Counsel misapprehend the scope of the decision in No. 140, when they say that the former judgment was taken only as an estoppel against an estoppel or was referred to simply as *stare decisis*.

> "This record," says Mr. Justice Magruder, "presents a case where the defendants set up a former judgment in its favor as an estoppel or *res judicata*, and the plaintiff insists upon another and later judgment, involving the same question, rendered in favor of such plaintiff, by a court of superior and appellate jurisdiction. (p. 57, Pr. Rec. 140.)"

The Court then proceeds and determines that, at common law, one judgment would offset the other and that the question would be left open to be tried over.

The Court further discusses the force and effect of the judgment in question and, after a lengthy review of the authorities, continues (pp. 60, 61, Pr. Rec. 140):

> "In the light of the authorities above referred to, the judgment entered by the court in the case of *People* v. *Theological Seminary, supra*, cannot be regarded otherwise than as final, so far as the question as to the exemption of the property here involved from taxation is concerned. If the appellant had reinstated the former case upon the docket in the County Court, and again brought it to this court, the question, which we there determined, would not have been reconsidered, and would not have been open for discussion. Here, although the

parties and subject-matter are the same as the parties and subject-matter in the former actions, yet the cause of action is different. Consequently, the material question here is, what fact or matter was determined or adjudicated in the former actions, and such fact or matter may be shown, by extrinsic evidence. Proof was introduced in this case to show what question was decided in the former actions, and proof has also been introduced to show what question was decided by the later judgment rendered by this court.

"It follows that the judgment rendered by this court, reversing the former judgment of the county court, in connection with the proof as to the question there involved, must be held to be an estoppel, as showing a former recovery or *res judicata*.

"It would be singular, indeed, if the party who had obtained the decision of an important question before the court of last resort, and obtained that decision in such a way that the question involved was finally settled between the parties, could not receive any benefit from such decision in a subsequent litigation where the same question was sought to be again raised."

There can be no mistaking the meaning of this language of the Illinois Court. Let us for a moment consider the situation of the parties. The people made application for judgment and the objector appeared and, among other objections, urged, *in bar* of the people's claim, a number of former recoveries as *res judicata*. No formal pleadings being required and the hearing being informal, the people at the proper time introduced in evidence the opinion of the Supreme Court of Illinois in which the question of the same exemption under the same charter and between the same parties had been fully determined and passed upon.

According to what rule of law can it be rightfully

held that the *only* purpose of the introduction of this opinion was to offset one judgment against the other? If there had been any pleadings, and by the pleadings, the judgment or opinion had been set up *only as such offset*, we would be free to admit some force to such a claim. Let us again refer to Mr. Justice Magruder's opinion (p. 58, Pr. Rec. 140):

> "Whatever may be the rule upon this subject in other jurisdictions, a judgment rendered by this court reversing and remanding a cause for further proceedings in acordance with the views expressed in the opinion rendered is a final judgment, so far as the questions decided in the opinion are concerned."

Here was a clear cut issue between the parties as to whether there is a former recovery or *res judicata*. The recovery of the judgment was admitted, but it was sought to avoid it by contending that it was *not final*. This question also was fully considered. The Court said (pp. 61-62, Pr. Rec. 140):

> "It thus appears that the opinion of this court in *People* v. *Theological Seminary, supra*, is, by stipulation, made a part of the evidence in the case at bar. The case, as here presented, therefore, shows upon its face the particular question decided by this court and is not merely a general allegation, that a judgment of reversal and remandment for further proceedings was entered. While it may be true that, as a general thing, a reversal remands nothing but its own correctness, and simply nullifies the former judgment or decree, declaring that it shall henceforth be void, yet it may have a more extensive operation, either as a bar or as an estoppel, if it is shown that it directly affirms or denies some distinct fact in issue. (*Harvey* v. *Richards*, 2 Gallison, 216.) The judgment of reversal is here shown to directly determine a distinct ques-

> tion which was in issue, and, therefore, it operates as a bar or estoppel."

The Court also disposes of the question that no mandate was filed, and (p. 62, Pr. Rec. 140), holds that that fact does not and cannot have any

> *"effect upon the validity and finality of the judgment rendered by this court, so far as the question here involved was determined and settled by that judgment."*

The only "question here involved" and "settled by that judgment" was the construction of the exemption clause of the charter. We have a clear cut and unmistakable decision that the judgment in *People* v. *Theological Seminary, supra*, finally settled the construction of the exemption clause and is a bar. We submit that every other question might with propriety have been eliminated from the discussion and the same judgment of affirmance rendered.

This is one of the grounds on which the judgment below was rendered, and the writ of error ought to be dismissed.

> *Bacon* v. *Texas*, 163 U. S., 207;
> *Eustis* v. *Bolles*, 150 U. S., 361;
> *Beaupre* v. *Noyes*, 138 U. S., 397;
> *Rutland Railroad* v. *Central Vermont Railroad*, 159 U. S., 630;
> *Gillis* v. *Stinchfield*, 159 U. S., 658;
> *Seneca Nation* v. *Christy*, 162 U. S., 283.

It is urged that in No. 265 there is no question of *res judicata*. We submit, however, that the opinion of the court, by Mr. Justice Carter (page 31, Pr. Rec.), clearly shows that the judgments in *People* v.

Theological Seminary, 174 Ill., 177, and *Chicago Theological Seminary* v. *People*, 189 Ill., 439, were regarded as final adjudications in regard to the matter involved, and that for that reason the judgment was affirmed.

If plaintiff in error had considered that the decision in 174 Ill. was not a final adjudication of the questions involved, there is no reason why it could not have filed the mandate of reversal and obtained a judgment in the County Court in conformity with the mandate and then have brought that judgment to this Court for the review of any alleged Federal question.

It appears to have been satisfied to let that judgment remain undisturbed, but it now seeks to induce this Court to believe that it is not final, by urging the same objections urged in the Court below, which objections were declared by that Court, under the laws of Illinois governing the practice in the courts there, to be not well founded. No objection is urged here, and no errors have been assigned, that the Illinois Court erred in deciding the questions of practice which are involved.

2. *The State Court did not give effect to and enforce a new rule of exemption established by the act of 1872. It was not necessary to determine whether the act of 1872 changed the rule of exemption. The State Court did not pass on any such question.*

It does not appear that the Supreme Court of Illinois has given effect to any of the provisions of the revenue act of 1872, except upholding the right of the State to assess property which was subject to taxation. In determining what property is subject to taxation,

no regard whatever was given to any of the provisions of the act of 1872. The act of 1872 is an act for the assessment of property and for the levy and collection of taxes, and is simply a revision of the laws of the State of Illinois and a continuation of then existing laws of the state, except in so far as particular provisions have been altered or changed. We admit that the state cannot pass any law impairing the obligation of a contract. It is the province of the State Courts to construe that charter with reference to the constitution and laws of the State in force at the time of the granting thereof. We submit that a re-enactment of a law is not the passing of a new law within the inhibition of the Federal Constitution, and that the inquiry of the Court should be, whether the new law prescribes a new rule of action, or creates new rights, or imposes new liabilities, and whether the State Courts *have enforced or given effect to the new obligations thus created.*

Counsel for plaintiff in error have made a very elaborate argument on the construction of the charter, and have attempted to show that the construction claimed by the State would, if adopted, lead to all kinds of absurd and ridiculous situations. They have, however, nowhere pointed out any provisions of the revenue act of 1872 upon which the right to tax is based, nor have they shown wherein this differs from the old law. What provisions of the constitution of 1870 or the revenue act of 1872 have been invoked or given effect to which would authorize this Court to review the findings of the State Court? Let us assume that under the revenue act of 1872 an altogether different rule of exemptions exists, must it not appear that the Supreme

Court of Illinois enforced against the plaintiff in error that different rule of exemption? As a matter of fact, all that the Supreme Court of Illinois did was to maintain the right of the State to assess property for taxation which was not exempt under the provisions of the charter of plaintiff in error. The Supreme Court of Illinois did not give effect to any of the provisions of the act of 1872, except such provisions as were in the revenue acts of the State in force at the time of the granting of this charter.

The *revenue act* of 1845 provided for the assessment of *all* property, real and personal, "subject to the *exceptions hereinafter stated.*"

The revenue act of 1872 provides for the assessment of *all* real and personal property, "except so much thereof as may be, *in this Act,* exempted."

The exemptions in the act of 1845 are

> "every school house * * * and the land whereon such buildings are situated," also "every building erected for the use of any literary, religious, benevolent, charitable or scientific institution, and the tract of land on which the same is situated, *not exceeding ten acres.*"

The exemptions in the act of 1872 are:

> "all property of institutions of learning, including the real estate on which the same are located, not leased by such institution or otherwise used with a view to profit."

The Illinois Supreme Court held this to mean only the real estate on which the buildings are situated.

Theological Seminary v. *People,* 101 Ill., 578.

The exemptions granted under the act of 1845 were

strictly construed by the Illinois Supreme Court. It was held that the buildings must not be *"rented for a profit."*

Mr. Chief Justice Caton said:

> "The meaning of this law is, as applied to religious buildings and furniture, that they must be used directly for sacred and not for secular purposes."
>
> *First M. E. Church* v. *City of Chicago*, 26 Ill., 482-488.

It will be seen that the exemptions in the act of 1872 *are identical with those in the act of 1845*, except that the act of 1872 is *more liberal*, not confining the amount of land to ten acres.

It is true that the act of 1845, by express terms, exempted "all property which is, or may be, exempt from taxation by special law." This, however, cannot be of any special moment. The property involved here was subject to assessment prior to the adoption of the constitution of 1870. No different rule of exemption having been invoked than could have been invoked under the law which was in force at the time of the granting of this charter, we maintain that the cases at bar are brought directly within the doctrine of *St. Paul, etc., Ry.* v. *Todd County*, 142 U. S., 283, for the reason that the subsequent law, so far as any question arising here is concerned, was the same as the law under which the charter was granted.

> "The position of the state court was not that the lands in question were rendered taxable by any law passed subsequent to the company's charter, but that under the terms of the contract itself the lands were taxable."

Plaintiff in error does not seek any rights to exemption under the revenue act of 1872. Whether that act exempts any or all or none of the property of plaintiff in error is immaterial.

It is not the constitution of 1870, nor is it the revenue act of 1872, which creates or establishes the rule of exemption which has been here applied to the charter of plaintiff in error. No rule contained in these new enactments has been enforced to fasten upon the property assessed under those acts any burden of taxation to which it was not liable under the old law.

We have here practically the same general provisions that we find in the Minnesota statutes quoted in *St. Paul, &c., Railway* v. *Todd County*, 142 U. S., 282. There the new law provided that all real and personal property in the state, etc., "*except such as is hereinafter expressly excepted,*" should be subject to taxation. The old law contained the exception "not expressly exempted therefrom."

The property *was assessed* under a new law, and it was upon this assessment that the taxes had been spread and this action *under a new law had been sustained by the state court.*

In commenting upon the law, Mr. Chief Justice Fuller quotes from the opinions by Mr. Justice Gray, in *New Orleans, &c.*, v. *Louisiana Sugar Refining Company*, 125 U. S., 18-30, and by Mr. Justice Miller, in *Railroad Company* v. *Rock*, 4 Wall., 177-181, and *Knox* v. *Exchange Bank*, 12 Wall., 379-383, to the effect that it must be a subsequent law or constitution of the state which impairs the obligations of a contract and that *effect must have been given to such subsequent law or constitution*, and then proceeds:

"The position of the state was not that the lands in question were rendered taxable by any law passed subsequent to the company's charter, but that under the terms of the contract itself the lands were taxable. No subsequent law is referred to upon which the opinion of the court proceeded; on the contrary, the law was the same, so far as any question arising here was concerned, as that above quoted from the territorial law of 1851. What the court held was that the statutes imposing restrictions upon the taxing power of a state, except so far as they tend to secure uniformity and equality of assessment, are to be strictly construed, *Bank* v. *Tennessee*, 104 U. S., 493, and that tested by this rule the exemption in the company's charter 'was not applicable to large tracts of timber land purchased by the corporation from which to take timber to be converted into ties and lumber for the use of the corporation,' and that consequently these lands were subject to taxation. It is impossible, therefore, for this writ of error to be sustained, and it is accordingly dismissed."

In

R. R. Company v. *McClure*, 10 Wallace, 511-515,

it was said:

"But the state has passed no law upon the subject, and the constitution of the state, which, as construed by the Supreme Court of the state, has worked the result complained of, was in force when the bonds were issued."

In

Knox v. *Exchange Bank*, 12 Wall., 383,

this Court said:

"It is rather insinuated than declared that the court gave such effect to the act of February, 1866, under which the bank made its assignment. But

nothing in the record shows that the court based its judgment on any such proposition."

And in

Railroad Company v. *Rock*, 4 Wallace, 171-181:

> "It must be the constitution or some law of the state, which impairs the obligation of a contract, or which is otherwise in conflict with the constitution of the United States; and the decision of the state court must sustain the law or constitution of the state in the matter in which the conflict was supposed to exist, or the case for this court does not arise."

Whenever this Court has assumed jurisdiction in matters of this kind, so far as we have been able to interpret the decisions of the Court, some provision of a new law which changed the rights and obligations of the parties had been given effect to. Not so in the case at bar. No provisions of any subsequent law have here been invoked or enforced to "render taxable" the lands here in question.

II.

THE CHARTER OF PLAINTIFF IN ERROR EXEMPTS ONLY SUCH PROPERTY OWNED BY IT AS IS A PART OF OR CONNECTED WITH ITS SEMINARY LOCATED IN THE CITY OF CHICAGO.

1. *The exemption clause of the charter has been construed by the Supreme Court of Illinois in Theological Seminary* v. *People, 174 Ill., 177, and this is res judicata.*

This question, and the proper arguments to be made

under it, have been anticipated in the discussion of the question of the jurisdiction of this Court. This is purely a question of the effect of the judgment in 174 Ill., 177, as measured by the practice act of the State.

Counsel for plaintiff in error have at some length argued that the judgment is not final. This Court, as to the meaning of the State practice act, will follow the decisions of the State Court. In the opinion in No. 140, reported as *Theological Seminary* v. *The People*, in 189 Ill., 439, this whole question is very elaborately discussed and it is there decided, on the strength of the numerous cases there cited, that, as to the meaning of the exemption of the charter of plaintiff in error, the judgment of the Supreme Court in *People* v. *Theological Seminary*, 174 Ill., 177, is final and conclusive and is *res judicata*.

We admit that if the exemption clause had been construed for the first time in the cases at bar the subject-matter, if a Federal question is involved, would be open for this Court for its own construction. We do not claim the judgment in the cases at bar as *res judicata*. We do insist that the judgment in *People* v. *Theological Seminary* is *res judicata* and as such ought to have been enforced. Plaintiff in error saw fit not to raise the Federal question, if one existed, in that proceeding and, presumably for that reason, did not avail itself of the opportunity to file the order of reversal and compel the County Court to enter judgment, and thus again take the matter to the higher courts for review. It ought not now be permitted to escape from the effects of a judgment which it permitted to remain in force.

2. *It is the law of the State of Illinois, as it is the law adhered to by the Supreme Court of the United States, that all laws exempting property from taxation must be strictly construed. It will not be presumed the legislature intended to exempt property from taxation. That intention must appear affirmatively, and will be strictly construed.*

In

Wilmington & Weldon Railroad v. *Alsbrook*, 146 U. S., 279-293, on page 294,

Mr. Justice Fuller said:

"The applicable rule is too well settled to require exposition or the citation of authority. The taxing power is essential to the existence of government, and cannot be held to have been relinquished in any instance unless the deliberate purpose of the state to that effect clearly appears. The surrender of a power so vital cannot be left to inference or conceded in the presence of doubt, and when the language used admits of reasonable contention, the conclusion is inevitable in favor of the reservation of the power."

In

Delaware Railroad Tax, 18 Wall., 206,

Mr. Justice Field said:

"If the point were not already adjudged, it would admit of grave consideration whether the legislature of a state can surrender this power and make its action in this respect binding upon its successors, any more than it can surrender its police power or its right of eminent domain. But the point being adjudged, the surrender, when claimed, must be shown by clear, unambiguous language which will admit of no reasonable construction consistent with the reservation of the power.

If a doubt arises as to the intent of the legislature, that doubt must be resolved in favor of the state."

In

Farrington v. *Tennessee*, 95 U. S., 679,

Mr. Justice Swayne said:

"When exemption is claimed, it must be shown indubitably to exist. At the outset, every presumption is against it. A well founded doubt is fatal to the claim. It is only when the terms of the concession are too explicit to admit fairly of any other construction that the proposition can be supported."

In

Ohio Life Insurance Co. v. *Debolt*, 16 How., 416,

Mr. Chief Justice Taney said:

"Neither the right of taxation nor any other power of sovereignty which communities have an interest in preserving undiminished will be held by the court to be surrendered, unless the intention to surrender is manifested by words too plain to be mistaken."

Mr. Justice Gray, in

Railroad v. *Dennis*, 116 U. S., 688,

said:

"The rule has been strictly upheld and constantly reaffirmed in every variety of expression. It has been said that neither the right of taxation nor any other power of sovereignty will be held by this court to have been surrendered, unless such surrender is expressed in terms too plain to be mistaken; that exemption from taxation should never be assumed, unless the language used is too clear to admit of doubt; that nothing can be taken against the state by presumption or inference; the surrender, when claimed, must be shown by clear,

unambiguous language which will admit of no reasonable construction consistent with the reservation of the power; if a doubt arise as to the intent of the legislature, that doubt must be solved in favor of the state; that a state cannot, by ambiguous language, be deprived of this highest attribute of sovereignty; that any contract of exemption is to be rigidly scrutinized and never permitted to extend, either in scope or duration, beyond what the terms of the concession clearly require; that such exemptions are regarded as in derogation of common right, and therefore not to be extended beyond the exact and express requirements of the grants, construed, *strictissimi juris.*"

In

Providence Bank v. *Beattie*, 4 Peters, 514,

Mr. Chief Justice Marshall said:

"That the taxing power is of vital importance; that it is essential to the existence of government; are truths which it cannot be necessary to reaffirm. They are acknowledged and asserted by all. It would seem that the relinquishment of such a power is never to be assumed. We will not say that a state may not relinquish it; that a consideration sufficiently valuable to induce a partial release of it may not exist; but as the whole community is interested in retaining it undiminished, that community has a right to insist that its abandonment ought not to be presumed, in a case in which the deliberate purpose of the state to abandon it does not appear."

In

Charles River Bridge v. *Warren Bridge*, 11 Peters, 544,

it was decided that there must be no ambiguity as to what is exempt. All ambiguities in the terms of the

contract must operate against the grantees and in favor of the public, and the objector can claim nothing that is not clearly given by the act.

In

Chenango Bridge Co. v. *Binghampton Bridge Co.*, 3 Wallace, 51,

it was said:

> "If, on a fair reading of the instrument, reasonable doubts arise as to the proper interpretation to be given to it, those doubts are to be solved in favor of the state; and where it is susceptible of two meanings, the one restricting and the other extending the favor of the corporation, that construction is to be adopted which works the least harm to the state."

In Illinois, the Supreme Court has uniformly held to the strict construction.

Montgomery v. *Wyman*, 130 Ill., 17;
Theological Seminary v. *People*, 101 Ill., 518;
In Re Swigert, 123 Ill., 267.

Prior to the constitution of 1870, the legislature of Illinois passed a special act incorporating certain named persons and their successors a body politic and corporate to be styled "The Board of Directors of the Chicago Theological Seminary." They were empowered "by that name and style" to acquire, hold and convey property. They located a seminary in the City of Chicago. Presumably, this was done to comply with the provisions of section 2 of the charter, "That the seminary shall be located in or near the City of Chicago." The charter provided for a board of directors. The board of directors were given power to appoint "an executive

committee and such agents as they may deem necessary, and such officers, professors and teachers as the government and instruction of the seminary may require." (Sec. 4.)

In the fifth section it was provided:

> "That the property, of whatever kind or description, belonging or appertaining to said seminary, shall be forever free and exempt from all taxation for all purposes whatsoever."

It is this clause which is sought to be construed in the cases at bar.

What is meant by the "seminary" mentioned in the second, fourth and fifth sections? We submit that this charter, as against the state, must be strictly construed. We admit that such construction is to be reasonable and not absurd. "The seminary shall be located in or near the City of Chicago." Will it be maintained that this corporation could have established its school in the City of Springfield? Evidently the incorporators thought they were to locate the seminary in or near the City of Chicago, and accordingly they did locate it in that City, and have always maintained it there. What absurd construction is there in this proposition? Let us now pass on to the fourth section: "The board of directors shall have power to appoint * * * such officers, professors and teachers as the government and instruction of the seminary may require," etc.

Counsel for plaintiff in error would have us believe that the word "seminary" here means "corporation." Teachers and professors to instruct the corporation! In what? To elect the board of directors? To instruct the board of directors how to run the corporation? We respectfully submit that this appears rather absurd. The

officers, professors and teachers are for the purpose of giving instruction in the seminary which is to be located in or near the City of Chicago. What is a seminary? Webster's International Dictionary defines it as "a place of education, as a school of a high grade, an academy, college or university." Of course we must have professors and teachers in a place of education, in a school, especially of a high grade, and the board of directors must appoint them. This is another absurd construction complained of by counsel for plaintiff in error! But we are told that it is the school that is the corporate entity; it is the seminary that is incorporated and that is the artificial person created by this charter; and for proof we are referred to the title of the act. Is it necessary, then, to refer to the title? Is the body of the act of such doubtful meaning that it is only by aid of the title that the word "seminary" can be construed as synonymous with the word "corporation." Under the construction contended for by the People, it is not necessary to refer to the title. We can see nothing doubtful or absurd in the contention that the corporation and the school or seminary are two separate and distinct things, one an artificial person owning, having title to the other.

In

Hadden v. *The Collector*, 5 Wallace, 107-110,

Mr. Justice Field delivered the opinion of the Court and, in speaking of the effect of the title of an act, said:

> "The title of an act furnishes little aid in the construction of its provisions. Originally, in the

> English courts, the title was held to be no part of the act,—'no more,' says Lord Holt, 'than the title of a book is a part of the book.' It was generally framed by the clerk of the House of Parliament, where the act originated, and was intended only as a means of convenient reference. At the present day the title constitutes a part of the act, but it is still construed as only a formal part; it cannot be used to extend or restrain any positive provisions contained in the body of the act. It is only when the meaning of these is doubtful that resort may be had to the title, and even then it has little weight. It is seldom the subject of special consideration by the legislature."

Mr. Chief Justice Fuller, in

Yazoo Railroad Co. v. *Thomas*, 132 U. S., 174-188,

in speaking of a similar question, said:

> "Again the preamble to the act is referred to by counsel as sustaining their construction. * * * But as the preamble is no part of the act, and cannot enlarge or confer powers, nor control the words of the act, unless they are doubtful or ambiguous, the necessity of resorting to it to assist in ascertaining the true intent and meaning of the legislature is in itself fatal to the claim set up."

The claim set up in the Yazoo Railroad case was one of exemption from taxation, and the strict rule of exemption was applied with such rigor that, where the body of the act was of such doubtful meaning that the preamble had to be resorted to, the mere fact of resorting to the preamble was convincing proof that the grant of exemption was so doubtful that it could not be sustained.

A very elaborate argument has been made in the cases at bar, based upon the alleged meaning of the word

"seminary" in the title to the act, in order to substantiate the claim of exemption from taxation. An admission or the fact that the claim to exemption contended for is doubtful or ambiguous, operates to leave the property in question within the operation of the general law subjecting all property to its proportionate share of the public burden and prevents an exception in its favor by exempting it therefrom.

> *"The necessity of resorting to it to assist in ascertaining the true intent and meaning of the legislature is in itself fatal to the claim set up."*
>
> *Yazoo R. R. Co.* v. *Thomas, supra.*

The only reasonable construction is to confine the meaning of the word seminary to the school established in the City of Chicago. Coming now to the exemption clause we find the words "said seminary." Again, we are told that it is absurd to construe these words as meaning anything but "the corporation." And again, we are referred to the title. An admission of doubt and ambiguity. It is also urged that the Court is bound to use the ordinary and primary meaning of "belong." That this implies ownership and that it is only the corporation which can own anything. With all due respect to the courts whose decisions have been cited by counsel for plaintiff in error, the ordinary and primary meaning of the word "belong" is not limited to that implying ownership.

Webster's International Dictionary defines the verb "belong" as follows: "To be a part of or connected with." This is not an absurd meaning and its adoption does not lead to absurd results. The verb "belong," in the sense of "to be a part of or connected with," is of

daily and ordinary use and is readily distinguished from the meaning implying "ownership." A few homely illustrations may not be amiss.

The coat on my back belongs to me, it also belongs to my apparel; the first implies ownership and the second is used in the sense of "a part of."

The chair in my office belongs to me and the arm thereof belongs to the chair. So, in the cases at bar, the plaintiff in error owns many pieces of property situated all over the state, and all these pieces of property belong to it; but only a few pieces belong to, or are a part of, the seminary. The "seminary" belongs to plaintiff in error, and the play grounds, dormitories, recitation halls, seminary buildings, and the grounds on which they stand, the appliances and equipments in the building, libraries, museums, etc., belong to the seminary. It is in this last sense that the word "belonging" is used in the charter. It is used as practically synonymous with appertaining. This word does not imply ownership. This is not an absurd or unreasonable construction, neither can it be rightly called a strict construction. It is a construction giving to the words used a meaning very well understood in the every day vernacular, viz: all property which is a part of or connected with the school or place of education.

Reference has been made by counsel for plaintiff in error to a number of special charters granted by the State of Illinois containing exemption clauses, which in express terms limited the exemption to particularly described property. And it has been argued that if the legislature had intended in the cases at bar to limit the exemptions to particular property it would have speci-

fied such property. Whatever weight this argument may have is offset by the fact that the legislature of the state knew how to exempt all property of corporations created by it. We need refer only to the case of *University* v. *The People*, 99 U. S., 309. The exemption clause of the charter granted to the Northwestern University reads:

> "That all property, of whatever kind or description, belonging to or owned by the corporation, shall be forever free from taxation."

It will be noticed that in this exemption clause the words "belonging to" are explained by the following words—"owned by," giving to the verb "belonging" the meaning of ownership. It will also be noted that the legislature used the word "corporation," and in express terms forever exempted all property owned by the corporation.

In commenting upon the meaning of the constitution of Illinois, under which the charter then in question was passed, Mr. Justice Miller says:

> "The first observation we have to make is that the constitution does not say, 'property used for schools,' as the opinion of the court implies. Neither the important word *used* or *schools* is found in the section of the instrument on that subject. If the language were that the legislature might 'exempt property for the use of schools,' we should readily agree with that court. Indeed, that would be the appropriate language to convey the idea on which the court rests its decision.
>
> The makers of the constitution, however, used other language because they had another meaning, and did not use that because they did not mean that. They said that the legislature might exempt from taxation such property as they 'might deem necessary' (not for the use of schools, but) 'for

> school purposes.' The distinction is, we think, very broad between property contributing to the purposes of the school, made to aid in the education of persons in that school, and that which is directly or immediately subjected to use in the school."

Adopting the argument of the learned Justice to the case at bar, we observe that the legislature of the state did not say "property belonging to or owned by the corporation." They used other language, because they had another meaning; they did not use that because they did not mean that; they did say—"property belonging or appertaining to said seminary;" they qualified the verb "to belong" by the words "appertaining to," thus negativing any idea of ownership. They used the word "seminary" because they did not intend to use the word "corporation." The distinction between the corporation and the seminary, as already pointed out, is very clear. We do not see how even a liberal construction of the words used can negative the idea that the words "belonging or appertaining to" mean "being a part of or connected with," and that the word "seminary" means the school or place of learning, which the *corporation* has located and is maintaining in the City of Chicago.

The rule of strict construction, if applied to the charter, must be applied to every portion thereof, including Sec. 6, upon which counsel for plaintiff in error have laid so much stress. As was said by the Illinois court in

People v. *Theological Seminary*, 174 Ill., 178:

> "To say that liberal rules of construction must, under Sec. 6, be applied in favor of the contention that all property belonging or appertaining to

> the corporation is exempt, would be to beg the whole question. In determining what purpose is expressed in that section, resort must necessarily be had to the general rules for considering such laws. And when that purpose is ascertained, liberal rules of construction, if necessary, are to be resorted to to give effect to such purpose."

The charter is a contract, and the provisions in Sec. 6 can have no greater effect than a contract between two persons that certain provisions of the law (a strict construction in regard to exemptions) are not law. We submit that a provision in a contract that the contract itself shall be construed without reference to certain laws then in force are not such provisions as are within the protecting force of the Federal Constitution, which prohibits a State from passing any law imparing the obligation of a contract.

We respectfully submit that plaintiff in error has not presented a case within the jurisdiction of this court for the reason that the obligations of its charter have not been changed by any legislative act passed, or constitutional provision adopted, since it was granted, nor by construction of either by any court. That the prior adjudication of the scope of the charter of plaintiff in error, as tested by the law applicable to it, was acquiesced in by it as by defendant in error, and both should now abide by that decision. That, however this court may view the objections interposed to plaintiff in error now bringing these cases to this tribunal for a review of the scope of its charter, we earnestly contend that the term seminary, as employed by the General Assembly in its charter grant, did not mean the corporation created, which is co-extensive with the state, and, by comity, with all the states, but meant

simply the school—seminary—place of learning, where was to be afforded the educational facilities and features contemplated in the charter, and that the property in question is not exempted from bearing its proportionate share of the burden of government.

Respectfully submitted.

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APPENDIX.

In this appendix we have printed a portion of Section 191 of the Revenue Act of 1872, and also the opinion of the Supreme Court of Illinois, in *People* v. *Chicago Theological Seminary*, 174 Illinois, 177.

Sec. 191. The court shall examine said list, and if defense (specifying, in writing, the particular cause of objection) be offered by any person interested in any of said lands or lots, to the entry of judgment against the same, the court shall hear and determine the matter in a summary manner, without pleadings, and shall pronounce judgment as the right of the case may be. The court shall give judgment for such taxes and special assessments and penalties as shall appear to be due, and such judgment shall be considered as a several judgment against each tract or lot, or part of a tract or lot, for each kind of a tax or special assessment included therein; and the court shall direct the clerk to make out and enter an order for the sale of such real property against which judgment is given, which shall be substantially in the following form:

The People v. *Theological Seminary*, 174 Ill., 178:

This is an appeal by the People, on the relation of the county treasurer and ex-officio collector of Cook County, from a judgment of the County Court of said county sustaining the objections of appellee to an application for a judgment of sale of certain of its property

for non-payment of taxes. The objection was that the property in question was exempt and free from all taxation whatever.

It was stipulated that the appellee is the owner of a tract of land other than the tracts described in the objection, upon which is maintained a school for the purposes enumerated in the act of incorporation; also, that the income from the property mentioned in the objection is used for the sole purpose of maintaining such school; that some of the lots are vacant and some are used; that where they are used, all the rentals and income are held by the corporation for the exclusive use and support of the school and for the objects contemplated in the charter; that all the parcels and lots were bought for the promotion of the objects mentioned in the charter; that the lands which are occupied by the buildings or other direct appliances of education are not taxed or included in the parcels represented by the objection; that since the passage of the charter the corporation has accepted the same, and has expended in the erection and purchase of buildings, apparatus and other facilities and appliances for education, being for the promotion of the objects stated in the charter, over $200,000, upon the lots in question and also upon other lots owned by the corporation, and has built up an institution in which a large number of students are instructed, according to its charter.

The act incorporating appellee was approved February 15, 1855, and is entitled "An Act to incorporate the Chicago Theological Seminary." The first section creates certain persons named therein, and their successors, a body politic and corporate, to be styled "The Board of Directors of the Chicago Theological Semi-

nary," with power to acquire, hold and convey property, real and personal. The second section prescribes that the seminary shall be located in or near the City of Chicago; that its object shall be to furnish instruction and the means of education to young men preparing for the gospel ministry, and that the institution shall be equally open to all denominations of Christians for this purpose. The fifth section is as follows: "That the property, of whatever kind or description, belonging or appertaining to said seminary, shall be forever free and exempt from all taxation, for all purposes whatsoever."

The only question presented for our determination is whether or not the property of appellee, described in the application for judgment, is exempt from taxation by section 5 of its charter. Its contention is, that by the language, "that the property, of whatever kind or description, belonging or appertaining to said seminary" all the property owned by it and used for the sole purpose of maintaining its school, of whatever kind or description, wherever situated, is exempt from all taxation. On the other hand, it is insisted on behalf of the people that section 5 is only applicable to and exempts from taxation the property belonging or appertaining to the seminary, which, by the second section of the charter, was to be located in or near the City of Chicago and which has been so located and maintained.

The following propositions laid down by counsel for appellant are supported by the authorities cited, and are, we think, properly applicable to the decision of the issue here presented:

First. All laws exempting property from taxation

are to be strictly construed. *Montgomery* v. *Wyman*, 130 Ill., 17.

Second. The charter is a contract, but it is well settled that nothing can pass by implication. *United States* v. *Arredondo*, 8 Pet., 738; *Charles River Bridge* v. *Warren Bridge*, 11 *id.*, 544.

Third. It should not be presumed that the legislature intended to exempt property from taxation. That intention must appear affirmatively. *Providence Bank* v. *Billings*, 4 Pet., 514.

Fourth. And when such intention appears it cannot be extended beyond the letter and spirit of the act of incorporation. *Beatty* v. *Lessee of Knowles*, 4 Pet., 168.

Fifth. And such intention will be construed strictly. *In re Swigert*, 123 Ill., 267; *Presbyterian Theological Seminary* v. *People*, 101 *id.*, 578.

Sixth. There can be no ambiguity as to what is exempt. All ambiguities in the terms of the contract must operate against the grantees and in favor of the public, and the objector can claim nothing that is not clearly given by the act. *Charles River Bridge case, supra.*

Seventh. If, on a fair reading of the instrument, reasonable doubts arise as to the proper interpretation to be given to it, those doubts are to be solved in favor of the state; and where it is susceptible of two meanings, the one restricting and the other extending the favor of the corporation, that construction is to be adopted which works the least harm to the state. *Chenango Bridge Co.* v. *Binghampton Bridge Co.*, 3 Wall., 51.

That laws exempting property from taxation are generally subject to these rules of construction is not seriously questioned, but counsel for appellee say said

rules do not apply here, because by section 6 of the charter it is provided that the act "shall be construed liberally in all courts for the purposes therein expressed. We do not think this language was intended to or could be held to change or qualify the general rules of construction applicable to the section under consideration. Here the very question to be determined is, what is the purpose expressed in that section? And to say that liberal rules of construction must, under section 6, be applied in favor of the contention that all property belonging or appertaining to the corporation is exempt would be to beg the whole question. In determining what purpose is expressed in the section, resort must necessarily be had to the general rules for considering such laws. When that purpose is ascertained, liberal rules of construction, if necessary, are to be resorted to, to give effect to such purpose. Of course, the foregoing propositions relied upon by the appellant will not justify an unreasonable construction against the claim of exemption. If, however, taking the express words of the act, and without extending their meaning by implication, they may be held to include all property belonging or appertaining to the "seminary" mentioned in the second section, or to include all the property belonging or appertaining to the corporation, and there is reasonable ground for doubt which was intended by the legislature, that doubt must be resolved in favor of the state. In other words, if the language is capable of a broad or more restricted meaning, the latter must be adopted, The second section of the charter mentioning certain property to be located in or near the City of Chicago, and which is denominated "the seminary," we think the

words in the fifth section, "said seminary," refer to that particular property, and to so hold seems to do no more than to give the language of the two sections their literal and ordinarily understood meaning. To say, as is contended by appellee, that "said seminary" was intended to mean the corporation, is to extend the meaning of those words by implication, which is not permissible.

It is said that the only entity mentioned in the charter capable of owning property is the corporation, and therefore it could not have been intended that property belonging or appertaining to the seminary was meant by section 5. We think this position is based upon a too limited meaning of the words "belonging or appertaining" as here used. Of course, if the language of section 5 had been that the property, of whatever kind or description, *owned* by the said seminary shall be forever free from all taxation, etc., or if, as counsel seem to assume, the words "belonging or appertaining" here necessarily meant ownership of the property, then there would be force in this argument of counsel. It is undoubtedly true that the word "belonging" may mean ownership, and very often does. But that is not its only meaning. Webster's International Dictionary defines it: "2. That which is connected with a principal or greater thing; an appendage; an appurtenance." He also defines the word "pertain" as meaning, "to belong or pertain, whether by right of nature, appointment or custom; to relate, as 'things pertaining to life.'" Manifestly, the purpose of section 5 was to exempt property owned by the corporation, but it does not follow that the intention was to include in that exemption all property owned by it used for purposes of the school.

It is said the question for determination in this case has been decided in favor of the contention of appellee in the case of *People ex rel.* v. *Soldiers' Home and Baptist Theological Union*, 95 Ill., 561, following the decision of the Supreme Court of the United States in *Northwestern University* v. *People*, 9 Otto, 309, reversing the decision of this court in 80 Ill., 333. We do not so understand the case cited. The language of the charter of the Soldier's Home and the Baptist Theological Union, under discussion in that case, is as follows: "The property, real and personal, belonging to such corporation, at any and all times hereafter, shall be free and exempt from all taxation and assessments, special or general, for any and all purposes"; and the language of the charter of the Northwestern University is, "that all property, of whatever kind or description, belonging to or owned by such corporation shall be forever free from taxation for any and all purposes," so that there was and could have been no question, upon these charters, as to whether the exemption clause referred only to some particular property or class of property belonging to the corporation, because those charters in unmistakable terms exempt all property belonging to the corporation. We think this case turns upon whether or not the words "said seminary," used in the fifth clause, should be given the meaning of "said corporation." In our opinion the application of the rules of construction above referred to do not warrant such a construction.

The judgment of the County Court will be reversed, and the cause remanded for further proceedings in accordance with the views herein expressed.

Reversed and remanded.